Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20555

In the Matter of:	)	
Amendment of Part 73 and 74 of the	)	
Commission's Rules to Establish Rules for	)	MB Docket No. 03-185
Low Power Television, Television Translators,	)	
And Television booster Stations and to Amend	)	
Rules for Digital Class A Television Stations	)	

JOINT REPLY COMMENTS OF THE LPTV LICENSEES

To the Commission:

1. Comes now Abacus Television, Turnpike Television, et. al (hereinafter "Joint Commentors"), and, by their attorney, respectfully submit these reply comments in the above referenenced Notice of Proposed Rule Making ("NPRM").

I. Reply to Comments of R. Kent Parson.

2. Recognizing Mr. Parson's wide and special expertise in translator matters, these Joint Commentors were especially pleased that they can agree with and support Mr. Parson's comments in virtually every respect. In particular we were pleased that Mr. Parson appeared to agree with one premise expressed throughout our comments, to wit: that rural translators and urban LPTV's /Class A operate in dramatically different environments requiring significantly different regulatory structures. That is why our comments advocated a new simplified regulatory classification scheme: Rural Television (a secondary service) and Urban Television (a primary service).

3. Parson's comments at page 9 suggest that all LPTV's be required to originate some programs. While we agree with that requirement for stand alone Urban stations, the rules should provide an exception for LPTV's networked to cover large urban ADI's. In that instance, all of the LPTV stations repeat the programming originating from one

hub. The local programming originated from the hub (or mother station) is designed to address the needs and interests of the entire ADI. Because of the high cost of producing competitive programming in such large urban markets, it would be prohibitively expensive and uselessly redundant to require each station in the LPTV ADI network to originate different local programming. The Rules should, therefore, treat programming originated on the hub station as meeting the requirement for origination by all the stations in such a network. The Commission has recognized the economic reasonableness of this type of primary station rebroadcast when it authorized "satellite" full power stations to rebroadcast the program feed of full power mother stations.

4. Parson's comments at page 11 support the availability of two different emission masks. This is a reasonable approach in rural areas, where spectrum efficiency is sometimes not imperative. In Urban areas there is consistently a shortage of spectrum. The "stringent" emission marks should always be required.

5. Parson's comments at page 12 opposes the imposition of off set on translators in all cases. While we agree that offset may be inappropriate in rural areas, in urban areas existing licensees are today being "blocked" from finding displacement channels by non-offset urban translators (the first link in the translator chain) and LPTVs. If a translator uses spectrum in urban areas, it should **at least** be required to be offset. Better yet, translators should not be allowed in urban areas at all. Rather the first link should be a microwave link getting the mother station's signal out of the crowded urban environments and saving that spectrum for use by primary spectrum users.

II. Reply to Comments of the Riverton Fremont TV Club, Inc. ("Mr. Hillberry")

6. Mr. Hillberry's comments at page 8 suggest that LPTV's should not be allowed to

transmit any signal other than video. While this restriction may be appropriate for rural translators, it could potentially cause the death by economic strangulation of urban LPTV's. No one today knows where the urban LPTV industry is headed in the future service-wise. If the delivery of non video digital signals becomes a significant part of full power television stations' product mix, restricting LPTV's to video-only could impose on them a restriction that would competively handicap them so severely that they will be economically strangled. Part 73 rules contains a provision on minimum hours of broadcast operation. The Commission should reevaluate that minimum from time to time. Thereafter all broadcasters, large or small, Class A or LPTV or Full Power should be required to meet the minimum hours of broadcast operation rule. Beyond that minimum all broadcasters, large or small, should remain free to do whatever they wish with their spectrum, including nothing at all.

7. Mr. Hillberry's comments at page 8 suggest that the Commission make no adjustment in the protective contour of Class A TV stations. The failure of the Commission to take this opportunity to correct its unfortunate decision in the 6th Report and Order on Digital Television would be manifestly unfair. Other primary TV stations are protected to the equivalent to their Grade B contours. Class A TVs should not be relegated to some sort of "secondary" primary status. Their primary status should be acknowledged by protecting their Grade B contours, like every other Part 73 station. The quality and value of service provided to the Grade B contour of Class A stations is identical to that of full power stations. It is therefore, irrational to protect this service any less.

8. Mr. Hillberry's comments at page 9 suggest the use of Longely Rice for all translator and LPTV applications. In uncrowned rural areas that would be overkill. Contour

overlap remains a reasonable approach for rural application processing, with the use of Longely Rice only if a waiver is required to accommodate an applicant. In crowded urban markets, it is reasonable to require Longely Rice for all applications.

9. Mr. Hillberry's comments at page 9 also suggest that co-location applications be allowed on a waiver basis, and with written agreements. While rural translator operators may universally cooperate with one another, urban full power operators historically have been openly hostile to LPTV existence or growth (see e.g., the comments of the NAB/MSTV in this proceeding). Requiring a LPTV licensee to get a written agreement from its full power market competitor is tantamount to saying that co-location should not be allowed. And, that would result in a manifest waste of valuable spectrum. In urban areas, if a Longely Rice analysis indicates that a co-located or near co-located application does not cause cognizable interference such an application should be routinely granted (without either a waiver request or a written agreement).

10. Mr. Hillberry's comments at page 9 also suggest offset would cause an unneeded expense to translator operators. Exception from a universal offset requirement is justifiable in uncrowned rural environments. In crowded urban environments such an exemption cannot be justified, because the demand for spectrum is so high, spectrum is so valuable, and important services would be blocked by the operation of non-offset translators.

11. Mr. Hillberry comments at page 9 suggest ERP limits for digital translators and digital LPTVs should be at least 10dB below analog translator stations. Given his renowned expertise on translator matters, we agree with Mr. Hillberry's proposal for translator ERP limits. LPTV ERP limits are another matter. Given the tremendous cost

associated with the operation of urban studios and the production of local programming, it is imperative that LPTV/Class A stations be authorized to reach the largest possible audience with their programming. LPTV/Class A stations should be allowed to "maximize" their service areas on a spectrum available basis, after the completion of the displacement process, to levels that are proportional to the service areas of full power stations on corresponding channels. For example, LPTV/Class A maximum ERP's should be set 6 dB below that of full power stations in the same channel group. In particular the maximum ERP for high band VHF LPTV/Class A's should be increased to a level that permits adjacent channel operation of co-located low power stations.

12. Mr. Hillberry's comments at page 11 implicitly support the use of auctions for translators, with the proviso that settlements be allowed before auction without restrictions. Auctions among secondary service licensees is an oxymoron. Secondary licensees should be required to enter a settlement, including settlements that propose that one or more of the applicants change channels, or face dismissal. The Commission acts capriciously when it sells a would-be broadcaster a secondary authorization through the auction process knowing that at any time it could turn around and resell that same spectrum to a primary spectrum user in a subsequent auction. How can anyone claim such conduct is reasonable or fair? Since the Commission is required by statue to choose among mutually exclusive broadcast applicants the Commission should refuse to allow mutually exclusive, secondary service applications to remain on file and go to auction. Such applicants should be required to resolve their mutual exclusivity or be dismissed. The Commission could also further minimize everyone's exposure to such an untenable situation by adopting these Joint Commentors proposal that all Urban TV applications be

primary and all Rural TV applications be secondary and that Rural TV applications and Urban TV applications not be filed in the same window. If rolling widows are adopted for either rural or urban areas, rural applicants should be required to protect all existing and future urban applicants, while all future urban applicants would be required to protect only other urban (i.e. primary) authorizations and would not protect rural (i.e. secondary) authorizations.

13. In all other respects these Joint Commentors support the comments of the Riverton Fremont TV Club, Inc.

III. Reply to comments of Harbor Wireless, LLC. And Vulcan Spectrum LLC.

14. The theory for Harbor Wireless' and Vulcan Spectrum's ("Harbor's) opposition to digital and displacement applications above UHFchannel 51 is the completely unsupported premise that uncertainty about the television transition process is somehow responsible for the lack of investor interest in their wireless products. As a result, they oppose any additional secondary use of channels 52 - 59 by either analog or digital LPTV stations. Joint Commentors respectfully suggest that Harbor may have overlooked two, much more important, pertinent reasons for their frustrations. In case they haven't noticed the entire US economy has been mired in a recession and the stock market has been depressed for the last several years. It has been hard for anyone to raise capital for anything because of this recession. Furthermore, other than digital cellular telephone or PCS, the wireless industry has yet to launch a killer application that draws enough consumers to justify the multi-million dollar build-out cost of the celluarized, digitized systems, wireless entrepreneurs seek funding to construct. When the wireless industry finds such a killer application capital will flow notwithstanding secondary use of

channels 52 - 59 by displacement and digital channel-needy LPTV/Class A licensees.[1]

IV. Reply to Island Broadcasting Co. ("Island")

15. Island's statutory interpretation arguments seem a little strained to the extent they propose that Congress mandated digital conversion for both Class A 's and translators, but not LPTV's. A more reasonable interpretation of what the drafter of this legislation was trying to say results from an assumption that the drafter believed all LPTV's would convert to Class A status over time. These congressmen could not have anticipated the Commission interpreting the Community Broadcasters Act of 1999 so strictly that only a part of the **then existing** LPTV industry would **ever** be allowed to convert to Class A. This proceeding presents the Commission with a unique opportunity to both correct its niggardly implementation of Class A and to address Island's reasonable and well plead dilemma. If an urban LPTV converts to digital it should be deemed Class A eligible as a result. If an urban LPTV station elects to remain analog it should remain secondary. No secondary station, whether urban or rural, should be required to convert to digital (but any licensee should be allowed to convert with a simple letter when their audience preference dictates). Rural Class A and LPTV stations that convert to digital should be grand fathered as Class A digital or Class A eligible, but new digital rural applications should all be placed in the digital translator service. In summary, these Joint

[1] The Commission's LPTV branch employees have consistently and aggressively reacted to any complaint that an LPTV station might be interring with a primary service licensee. There is no hesitation on that staff's part to instruct the allegedly offending LPTV licensee to immediately cease transmissions. They do offer assistance with an Special Temporary Authority to permit that unfortunate licensee to move to another, non-offending channel as quickly as it able to, but resuming operation on their licensed channel is not permitted until and unless the LPTV licensee can prove it is not causing any interference to the primary service licensee. This manner of handling primary/secondary conflicts is so consistent that when a primary service co-channel licensee signs on the air most LPTV licensees automatically sign off the air without even being asked to or being confronted with an allegation of interference. As a result, there is not basis in fact for these commentors fears that additional secondary use of channels 52 - 59 will complicate the viability of their build outs.

Commentors support Island's argument that (urban) LPTV's should not be required to convert to digital any date certain, but not because of statutory ambiguity, but rather because analog LPTV remains a secondary service.

V. Reply to the comments of The Association of Federal Communications Consulting Engineers ("AFCCE").

16. In large part these Joint Commentors agree with and support the comments of AFCCE. In a few small respects, however, AFCCE's comments would result in rules that, while technically defensible, would be prejudicial to, harmful to, and impractical for the LPTV industry. We suggest this misplaced suggestions arise from AFCCE's unfamiliarity with the economics of the LPTV rather than either prejudice or technical incompetence. For example, AFCCE suggests at page 2 that analog LPTV stations be allowed to convert to digital on channel **on a secondary non-interring basis**. It is estimated that it will cost a LPTV station approximately $100,000 to convert to digital operation. See comments of Island Broadcasting. This amount is a formidable investment for a LPTV station. To adopt regulations to allow a LPTV station in a crowded urban market to convert to digital, but to insist that they would remain secondary after such a conversion is to provide no relief at all. All such an application would accomplish would be to flag the channel for would be primary service applicants so that at the next filing opportunity the could jump on the digital LPTV and take his channel. If the Commission allows urban LPTV's to convert to digital, they should automatically be Class A eligible (i.e. eligible to apply for primary status) as a result, so that they can not be displaced.

17. We also strongly disagree with AFCCE's concurrence with the Commission's unfortunate suggestions that Class A stations have the same protected contours as

translators. Congress intended Class A stations to be Part 73 stations in every respect. Nothing in the legislation suggested that they be consigned to secondary treatment. Part 73 stations are protected to their Grade B contours; Class A stations should be protected to their Grade B contours. Upon conversion to digital, a Class A station's digital contours should be equivalent to their analog Grade B contours and subject to "maximization" just like other Part 73 licensees.

18. Joint Commentors agree with AFCEE that the use of .5 percent threshold for the recognition of interference to and from rural translators and LPTV stations permits more efficient use of spectrum resources and allows more displacement and digital conversion channels to be assigned. Joint Commentors strongly disagree with AFCEE's one sided, prejudicial, give to the rich and take from the poor approach to the de minimus interference standard between Class A stations and full power stations. If a full power station is allowed to cause up to 2 percent interference to a Class A station then a Class A station should be allow to cause up to 2 percent interference to a full power station. They are both Part 73, primary spectrum users and there is not justification for giving Class A stations inferior spectrum rights.

19. AFCCE at paragraph 14 supports the authorization of adjacent channel applications. That support is conditioned on three requirements: D/U's, OET-69, and co-location. Joint Commentors respectfully suggest that passing the de minimus interference test, as administered by OET Bulletin 69 is a complete and sufficient evaluation of an adjacent channel application. If an application is near co-located or sufficiently distanced from an adjacent channel facility to pass OET Bulletin 69 any requirement of meeting particular co-location distances is redundant, because no

cognizable interference is caused. Similarly if OET Bulletin 69 shows no cognizable interference, documentation of "satisfactory D/U ratios" is redundant, wasteful, and overly regulatory. AFCEE's proposal to define co-location as being within 2 kilometers is an example of such unnecessary over regulation. The Commission has long used 10 kilometers as its standard for defining "near co-location" and granted numerous co-location waivers on this basis (provided OET-69 says there is no cognizable interference) and no complaints of actual interference have resulted. Given the extreme shortage of displacement and digital conversion channels in virtually every urban market, this is not the time for the Commission to arbitrarily become more conservative in its rules, absent a showing of a major problem in urgent need of fixing.

20. AFCCE's, at paragraph 15, blithely advocates requiring frequency offset for all translator stations. Some rural translators are so old that replacement of the entire translator or a major retrofit of the transmitter would be required to achieve the stability needed for frequency offset. In rural areas, with sparse spectrum use, imposing such costs would be both wasteful and economically devastating to these translator operators, while yielding no benefits to the public at large. Offsets should be required only in spectrally crowded environments. The Commission can easily determine when the spectrum is crowded enough to require that a translator add offset by simply deciding that any applicant blocked by a non-offset translator could request that the Commission mandate the addition of offset to the offending translator and that the Commission grant all such requests. Off set would then would only be "mandated" when it would do some good.

21. Lastly, AFCEE gives blanket support to the use of digital booster stations. Joint

Commentors oppose any digital booster authorizations. The authorization of boosters within a station's predicted contours is a relic from pre-LPTV days, when the only way to deliver a television service to fringe areas was to fill in a full power station's predicted service area with boosters that make use of otherwise unutilized spectrum. LPTV stations now "fit in" by taking into account the same terrain blockages that are used to justify an application for a booster station. Booster applications do no more than provide full power licensees an unfair opportunity to file for an LPTV or translator authorization that happens to be on their primary channel and can be fit in by taking terrain shielding into account. Full power stations should have to wait until a filing window and file for these "same channel" LPTV or translator facilities, when other would be spectrum users are allowed to file, and to win that extra spectrum in the resultant auction.

VI. Reply to comments of Association of Public Television Stations and PBS ("APTS/PBS")

22. Joint Commentors concur with the comments of APTS/PBS in most respects and particularly applaud their advocacy of the Commission allowing the maximum amount of technical and content flexibility in their regulation of digital translators and Class A stations. (Digital LPTV is omitted here, because we believe LPTV's that digitize should become Digital Class A stations automatically.) We disagree with APTS/PBS to the limited extent their comments support LPTV conversion to digital "on a non-interfering basis to users." Given the substantial investment the small businesses that constitute the vast majority of LPTV licensees would be required to make to convert to digital, it is critical that the Commission's digital rules include primary status for LPTV stations that undertake the cost of digital conversion. Recognizing the Commission's decision to reallocate television channels 52 - 69 to non- broadcast service, LPTV conversion to

these channels need not trigger automatic primary status. LPTV licensees that elect to make the investment necessary to convert to digital on these out of core channels will still be eligible for displacement to an in-core channel. Once they are able to move in core, perhaps after the full power stations turn in one of their channel pairs, the resultant digital displacement applications should then be primary, providing the needed protection of these small businesses' investment.

23. APTS/PBS, like other full power dominated trade associations, predictably supports the concept of digital booster stations. Digital booster stations are nothing more than on channel LPTV or translator stations, subject to the same technical interference avoidance considerations. Given any group of full power licensees special, exclusive rights to file for this spectrum is merely giving more to the big and wealthy at the expense of the little and poor. There is no need for a separate class of stations called boosters. Full power licensees, commercial or non-commercial, should be required to apply for this spectrum in translator (rural) or Class A (urban) filing windows in fair competition with other television spectrum users.

24. APTS/PBS advocates a novel approach to the question of requiring frequency offset or not: if the digital translator is on the lower adjacent channel to a digital LPTV, off set should not be required. Joint Commentors disagree with this approach because it focuses too narrowly on interference to previously authorized licensees and does not consider the large preclusive effect of the non-offset station on later filed applications. Non-offset applications are rational in rural, licensee sparse, areas, but can not be justified in urban, spectrally crowded, areas. The small cost of frequency offset is a tiny price to pay for using valuable urban spectrum. At a minimum, the Commission should

provide that any later filed applicant can require any non-offset licensee to add offset at that licensees own expense because its non-offset operation blocks their application.

25. APTS/PBS mirrors other full power dominated trade organizations in advocating the use of adjacent channels "either on a waiver basis or pursuant to a written agreement among all affected parties". As explained in its comments and these reply comments, Joint Commentors believe that it is facetious to require LPTV applicants to get written agreements from full power market competitors, and it is redundant to require a waiver request when a Longely Rice study demonstrates de minimus interference to an adjacent channel licensee.

VII. Reply to comments of du Treil, Lundin & Rackley, Inc. (dLR).

26. Joint Commentors agrees with dLR that the protected signal contours adopted for digital class A stations are appropriate for digital translator stations. Those protected signal contours are inappropriate for Class A TV stations, however, because those primary stations should have the same protected signal contours as full power primary stations. Furthermore, Joint Commentors believe that there should be no such thing as secondary, digital LPTV stations since any urban LPTV station that converts to digital should be given Class A/Primary status. Accordingly the table of protected contour values in dLR's comments should be applicable only to digital translators.

27. Joint Commentors strongly appose dLR's horribly spectrum wasteful proposal that the Commission ignore the interference reduction of effects of negative beam tilt (i.e. having a lower ERP towards the radio horizon, while having a higher ERP towards closer in, desired service area), just because by thus grossly overprotecting full power stations, the Commission will somehow reduce the potential for interference of LPTV

applications. Nothing in dLR's comments documents or demonstrates why taking beam tilt into account causes any inaccuracy in OET Bulletin 69 analysis. Actually dLR's horrendous proposal would make OET Bulletin 69 far less accurate and, as a result, preclude the use of many urgently needed displacement channels. In particular, adjacent channel displacement proposals in crowded markets heavily depend on significant beam tilt to achieve ERP's for the applicant that are within 12 dB of the adjacent channel full power station, while achieving much lower ERP's to the radio horizon, in order to squeeze in the proposed channel. Virtually all of these proposals would fail if the Commission arbitrarily ignored the reduced ERP towards the radio horizon. As a result, this dLR proposal would eliminate displacement channels in the most crowded markets, where they are most urgently needed, and grossly waste the public's most valuable spectrum for no good reason.

28. DLR also wants to add more taboos to Longely Rice, for example adding in intermodulation interference taboos to OET Bulletin 69. The Commission correctly and properly concluded that, given the relative power levels between full power stations and low power stations, the maximum amount of intermod interference that can be caused by a low power application will always be de minimus. As a result, adding intermodulation interference taboos to Longely Rice will merely add the complexity and the cost of repeatedly performing calculations that output results that always round to zero. The full power broadcast industry has a history of overprotecting its stations so much that the public interest finally dictated giving broadcast spectrum to other users, like land mobile radio, who make more efficient use the radio spectrum. The Commission should not blindly listen to the pleas of advocates for full power broadcasters and repeat that error

during the adoption of digital Class A and translator rules.

29. The comments of dLR provide no reason for reducing the definition of co-location from 10 kilometers to 2 kilometers or for considering hypothetical interference caused by "the maximum ERP at any horizontal or vertical angle." instead of using the **actual** ERP at each horizontal and vertical angle. The Commission should restrict itself to calculating interference as close to reality as is technically feasible, rather than arbitrary and unnecessarily overprotecting full broadcast stations at the expense of other television licensees. Similarly, dLR provides no rational for requiring translators in rural, spectrally sparse areas to bear the cost of frequency offset. Joint Commentors do agree, however, with dLR's arguments for requiring that urban LPTV stations use offset. In fact, Joint Commentors believe that all urban licensees be required to pay for the addition of their own offset, if they are not already offset today.

30. Joint Commentors strongly oppose dLR's reactionary proposal that digital Class A stations be regulated under Part 74 of the Rules. The Community Broadcasters Act of 1999 clearly contemplated the creation of a Part 73 service and the later conversion of those new Part 73 licensees to digital, primary status. It would be ludicrous for the Commission to suggest that as a price for being allowed to survive the transition to digital, Primary Class A stations must be downgraded back to Part 74, secondary license status. In fact, the exact opposite should happen when an LPTV station converts to digital: all digital LPTV stations should automatically become Part 73 primary licensees. It is more reasonable to say the rural translators that convert to digital should remain secondary, because the likelihood of them being displaced and not being able to find a displacement channel is nil, so their investment in digitizing is at much less risk. On a

similar note, Joint Commentors oppose dLR's proposal that analog LPTV displacement procedures apply to digital LPTV stations, because digital LPTV stations should be made primary and should not longer be subject to displacement.

VIII. Reply to comments of Association of Public Safety Communications Officials International, Inc. (PSCO)

31. Joint Commentors were both moved and heartened by the concern of PSCO that LPTV licensees not "set themselves up for disappointment and/or potential disputes with public safety agencies" by using channels 60 - 69 on a secondary basis. While this sudden concern for LPTV's welfare is welcomed, the should Commission rest assured that the LPTV licensee community will not easily be lulled into a false sense of security by secondary licenses, given the long and continuous history of being unceremoniously bumped from one channel block after another by spectrum hungry primary users, Virtually every LPTV licensee has had one or more of its stations bumped. That is a costly, uncompensated, highly disruptive experience that no small business person is likely to forget, ever. As a result, when an LPTV licensee proposes a new facility on channels 60 -69 (or 52-59 for that matter) they fully realize the danger of sudden, subsequent displacement by a primary user such as a public safety licensee. Conversely, channels 63, 64, 68 and 69 are likely to remain unused in numerous major television markets for the next five years or more. That is enough time for the digital transition process to run its course, triggering the turn in of hundreds of full power analog channels, creating hundreds of in-core channels for these out-of-core low power licensees to move down to. These unused public safety channels may be the only channels available in the larger markets on which LPTV's can "park" until the digital transition is complete and the simulcast channels are returned to the spectrum inventory. Joint Commentors

respectfully request that PSCO resist their urge to give these small businesses "channel 60 - 69 parking tickets" before rush hour begins.

32. Joint Commentors find even more outrageous PSCO's request that the Commission "enforce strict rules … in the exiting land mobile radio allocations in the 470-517 Mhz band (TV channels 14-20)." What would be more appropriate for the Commission to do is to initiate a rulemaking to adopt a time schedule for the removal of land mobile from **TV** channels 14 - 20 after construction and activation of public safely systems on channels 63, 64, 68 and 69. The activation of the tremendous capacity the digital use of this 24 Mhz of UHF spectrum will create, coupled with the increased use of commercial PCS/cellular services by the public safety community, will render private land mobile use of channels 14 - 20 redundant and superfluous. At the same time that the utility of TV channels 14 - 20 is declining for private land mobile radio use, the need for in core television channels for displacement relief is growing expedentially. The Commission should respond to this change in relative usefulness by reallocating these channels back to broadcast only use.

IX. Reply to Comments of the National Translator Association.

33. From the perspective of this group of LPTV licensees the comments of the NTA are wonderful. Not only do they score 100% on their comments on digital translator rules (after all no one is in a better position to speak for the translator industry) but they got everything important right in their comments regarding Digital LPTV. In particular NTA recognized that a digital LPTV service should be primary and regulated pursuant to Part 73 of the Rules. Accordingly, Joint Commentors will not echo "yes" to each of NTA's specific comments. It is sufficed to say the NTA got the big picture right.

34. One tiny nit pick with NTA is its concern, at page 29 of its comments, about delaying the start of rolling window procedures 30 to 60 days after the conflict list of mutually exclusive applications from the "companion digital station filing window" is published … . The Commission should require that the filing of digital applications be done electronically. That having been implemented, the Commission should update its database in real time, i.e. whenever a member of the public accesses the TV/LPTV/translator database they should find it to be up to date to the last application filed. Furthermore the Commission should run, overnight, a mutual exclusivity analysis and publish on a daily basis a list of the previous days mutual exclusivities. With the advent of electronic filing neither of these requirements should be overly burdensome on the Commission. Lastly, and of equal importance, the Commission should make each of the computer programs that it uses to process TV applications available on its Website, usable on line, and linked to the same databases as are accessed by its staff during application processing.

35. One additional minor disagreement regards booster stations. Joint Commentors feel that there should be no separate category called booster stations. Instead, same channel translators or LPTV stations should be applied for during normal filing windows with no special eligibility given to primary stations. But see, NTA comments at 26. Obviously these two differences of opinion are extremely minor when compared to the numerous well plead points in NTA's comments. Joint Commentors, therefore, strongly recommend the Commission's adoption of both the general thrust and the specific recommendations in NTA's comments, with the exception of these two minor differences outlined above.

X. Reply to comments of Fox Television Stations, Inc. & Fox Broadcasting Company ("Fox").

36. Joint Commentors largely support the suggestions of Fox in its comments. In particular, Fox's recommendation that analog LPTV's and translators should become secondary to new digital LPTV authorizations is consistent with our proposal that future urban digital authorizations all be in the Class A digital TV service, and therefore be primary. The Fox proposals differs from that of Joint Commentors to the extent that it proposes that digital translators also be primary. Primary status is much less of a concern for rural translators, because they are unlikely to be displaced because of lower spectrum demands in rural areas and if displaced they are virtually always able to find a replacement channel.

37. Fox's comments do raise two concerns we wish to address. First, Fox proposes that analog LPTV licenses be given one year in which to file for their digital authorizations, after which they would lose there priority. This proposal is problematic for two reasons. First, in the largest television markets there are a large number of LPTV stations who can not now find displacement channels and so, are waiting for the turn in of one half of the simulcast channel pairs, so that there will be additional in-core channels on which to move to. If the one year "window" begins too soon, these licensees will be unable to file, because there is no where for them to move to at this time.

38. The second concern raised by Fox's comments is its proposal that the Commission use the TIREM propagation model for evaluating LPTV digital applications. Joint Commentors are not familiar with this program. We certainly support Fox's suggestion that the Commission evaluate this alternative to determine if it is superior to

Longley Rice. It remains imperative, however, that whatever algorithm the Commission uses to process applications, the computer program and associated databases used by the Commission should be promptly placed on line in an executable form, so that the hundreds of small businesses that make up the LPTV industry can use tools identical to the FCC staff for the preparation of their digital applications. OET Bulletin 69 is just beginning to become available to these small businesses. They can ill afford the cost of converting yet another program to their desk top operating systems in order to be able to prepare and file aceptable digital applications.

XI. Reply to the Comments of the National Association of Broadcasters and MSTV.

39. NAB/MSTV predictably premise their entire evaluation of the Commissions NPRM's proposals on a self serving, narrow minded, Neanderthal view of the Broadcasting industry. They still think of their members, the full power broadcast stations, as the only "broadcasters." Even though there are now literality thousands of LPTV stations, many of whom are Telemundo, Fox, Univision, UPN, WB, Shop at Home, Home Shopping, and Trinity Broadcast network affiliates (just like many full power stations), many of who produce as much or more original programming as the full power stations in their markets, a majority of who are carried on cable, many of who, because they are located in large urban areas, have greater over the air viewer reach than full power television stations outside of the top 35 television markets, many of whom broadcast more hours per day than a majority of the full power stations, many of whom produce as much local news programming as a majority of the full power stations, and many of whom broadcast uniquely tailored formats to otherwise un-served foreign language communities throughout the country, NAB/MSTV are still talking like it is pre-

1980 and they are the only ones doing broadcasting. As a result of them starting with a premise that is twenty years out of date, everything that follows in the NAB/MSTV's comments is myopic, selfish and mean-spirited.

40. For starters NAB/MSTV is clear in its opening summary that, now that each of the full power stations has received their second, simulcast channel on which to transition to digital, they think that none of the other stations doing broadcasting (e.g., LPTV or Class As), should get a digital simulcast channel. Even though they plead at earlier stages in the DTV transition process that simulcast channels were critical to the survival of over the air broadcasting, they now plead that the rest of the broadcasters should not get simulcast channels. Obviously, it is not that a second channel is no longer critical, but that NAB/MSTV does not want the LPTV industry to survive the transition to digital. NAB/MSTV also (conveniently) asks the Commission not to do anything too helpful to the LPTV digital conversion process, because it would disrupt the transition of full power television stations to digital. Perhaps they fear so, because they have forgotten all the DTV conversion progress that has been made over the last ten years (just like they forgot about the growth of LPTV over the last 20 years). NAB/MSTV just totally forgots that all of the full power stations have already received their digital construction permits, which are protected from later authorized digital LPTV permits. They have also forgotten that the multi-year window for filing maximization applications has come and gone and most of those maximization applications are cut off and protected from later authorized digital LPTV permits. They have also forgotten that the mast majority of American citizens already receive multiple DTV signals from digital full power stations and that that service is protected from later authorized digital LPTV permits. They have

also forgotten (or just don't care) that over six hundred Class A analog licensees (and possibly another 1,400 LPTV licensees) will have to terminate their analog service at the end of 2006 or shortly thereafter and must begin building a digital audience base to survive that transition.

41. NAB/MSTV plead that the Commissions foremost concern should be protecting the interests of full power broadcast stations, because that protection is the best way to encourage the digital transition process. Joint Commentors respectfully submit that giving the full power stations a little bit of competition from digital LPTV/Class A stations is the best way to ensure that the new digital broadcast service serves the public, and therefore the public interest. It has been proven to many times to be questioned at the juncture that the Government is in no position to determine which broadcast programs or which broadcast program delivery mechanism best perform in the market. The safest and most economically efficient course for the Commission is to establish a level playing field, i.e. facilitate the transition of all segments of the broadcast industry to digital on an impartial, equitable basis, and then to let a competitive market place determine who is best serving the public. Accordingly, the Commission should totally ignore NAB/MSTV's anti-competitive proposals to handicap the LPTV digital transition process. Instead the Commission should give the LPTV/Class A industry digital simulcast channels, just as it did for the full power TV industry, it should provide equivalent to Grade B, digital service areas, just like it did for the full power TV industry, and it should use the same interference protection criteria and allow the same levels of interference incursions as it did for the full power TV industry.

42. NAB/MSTV at their page 6 argues that the daunting task of repacking television

broadcast stations into channels 2 through 51 will be made even more difficult by further congesting broadcast spectrum with second channel grants to Class A, LPTV, and translator stations. As a preliminary matter these Joint Commentors note that the vast majority of translators are in rural areas where there are no full power stations on channels 52 - 69, so there will not be any repacking to be done. The majority of LPTV and Class A stations are in crowded markets where repacking will take place and will be a daunting task. Nevertheless, the dual, conflicting tasks confronting the Commission - managing the digital transition and repacking the television bands -involves reaching a fair, efficient, and equitable accommodation of all broadcasters, full and low power, not just placating the big city, network affiliated, highest revenue, heaviest spectrum using, lowest common denominator format, full power broadcasters.

43. The Commission has an equal obligation to insure the transition to digital and the accommodation on channels in the core TV band of the broadcasters serving second language minorities, religious audiences, shopping fanatics, and viewers more interested in the news, personalities, and political events of their small towns or urban communities than what is happening in New York, Los Angeles, and Washington, DC. These millions of heretofore underserved viewers have just as much right to have "their" broadcast stations converted to digital and moved into the core television band as the main stream audiences of the big city, full power broadcasters. The Commission should not categorically favor one group of broadcasters, one type of program format, or one audience group over all others. To conclude this proceeding in the niggardly manner NAB/MSTV suggests in its comments would be to do so. Admittedly being fair, equitable, and efficient makes these two tasks more difficult, but the result will be more

in the Public Interest.

44. NAB/MSTV misinterprets the meaning of the Community Broadcaster Act of 1999 by reading into the statute a Congressional intent that Class A stations not be assigned a simulcast channel by the Commission. NAB/MSTV do not address the same statute's mandate that the Commission allow Class A stations to apply for a digital simulcast channel. When both provisions are considered together, it is clear that what Congress intended was that, although the Commission did not have to find and award a second channel to each Class A licensee, the Commission should provide an opportunity for Class A stations to find their own non-interfering digital channel and grant those simulcast channel applications. It is ridiculous to suggest that Congress mandated the creation of a new, primary, low power class of television stations intending that they disappear when the Nation converts to digital only seven years later.

45. The Community Broadcaster Act of 1999 neither required nor prohibited the Commission from allowing LPTV and translator stations to apply for separate digital authorizations. In the case of translators, absent other primary service need for the spectrum, there appears to be no public interest rational for not affording rural Americans access to digital television on the same basis as urban Americans, i.e. on a simulcast basis until the digital TV set penetration reaches at least 85%. As for Class A television stations, the statute is clear that the Commission should accept such applications. LPTV stations are not clearly addressed by the statute, i.e. neither promised a filing opportunity nor denied one. As these Joint Commentors plead in their Comments, we believe the most equitable outcome to the dilemma posed by this secondary service licensee class being asked to invest $100,000 per station to digitize is to make any LPTV station that

converts to digital Class A eligible, and therefore primary.

46. NAB/MSTV describes the services that would result from assigning digital simulcast channels to Class A, LPTV, and translator stations as "interference-causing services." The new, digital service that will result is broadcast-causing service, programming service, news service, religious service, foreign language service, and only interference causing to the de minimus amount permitted when an application is granted. The Commission has correctly determined that the new service created is far more valuable than the de minimus loss of service that results from making this more efficient use of the broadcast spectrum.

47. It is humorous to hear NAB/MSTV complain that allowing these small businesses a second facility merely encourages these broadcast service providers to convert to digital sooner, rather than later in order to gain priority over completing applicants. See NAB/MSTV comments at 10. The 1,700 full power stations partially represented by NAB/MSTV have already gotten their channels, without competition. If NAB/MSTV is so concerned about a competitively level playing field for digital TV spectrum it should advocate that the full power television stations give back their digital channels and apply for them in fair competition with the rest of the broadcast industry.

48. It is also humorous to hear NAB/MSTV express concern about Class A, LPTV and translator stations losing their investment in digital equipment because of unavoidable displacements that occurs as a result of channel repacking and channel changes by full power licensees. NAB has a long history of arguing against LPTV must carry, LPTV power increases, for LPTV mutually exclusive auctions, and now against LPTV digital simulcast channels. Joint Commentors are suspicious of NAB's sudden

concern for our welfare, but, giving NAB the benefit of the doubt, we respectfully suggest that NAB/MSTV strongly advocate that all LPTV and Class A stations immediately become primary, Part 73 licensees, no longer subject to displacement, that any digital authorizations we are successful in applying for are also granted primary status, and that we enjoy must carry rights equal to full power broadcasters. With their assistance gaining these protections are investments will be safe.

49. The reason the coordination of new full power DTV stations along the Canadian and Mexican borders is so difficult is because the maximum power levels assigned these permittees is so high (e.g. up to 1.0 Megawatt average digital power) that these new facilities are predicted to cause interference hundreds of miles into these two adjacent countries, precluding the use their spectrum for digital conversion. NAB/MSTV might well advocate that its members within 400 miles of either border limit their digital plants to a maximum of , e.g. 15 kW average digital power. At these more moderate power levels the coordination issues will quickly be resolved. This adjustment will have the secondary, palliative effect of greatly reducing spectrum congestion on this side of the border as well, without significantly decreasing the actual reach of the digital stations involved. See comments of R. Kent Parsons regarding the performance of extremely low power digital TV translators.

50. Joint Commentors agree with NAB/MSTV that the Commission has the statutory authority to perpetuate the secondary status of LPTV into the digital era. It would be an unfortunate, short sighted, and punitive act to do so, but the Commission statutorily could make that wrong-headed decision. Joint Commentors can find no basis for NAB/MSTV's argument that the Commission can ignore the clear intent of the

Community Broadcast Act of 1999 and reconvert Class A stations back to secondary status because they become digital. Lastly, these Joint Commentors agree that the Commission can, and do not specifically oppose the creation of a secondary digital translator service. We respectfully defer to the comments of the National Translator Association on the question of primary vs. secondary status for digital translators. Saying that the Commission could make digital LPTV's secondary is not the same as saying the Commission should. In our comments we argue that any LPTV licensee converting to digital (including on a second, simulcast channel) should become digital Class A/Primary. If the Commission recognizes the reasonableness of this approach, NAB/MSTV will get their ugly wish, because there will not be any digital LPTV's - they will all be digital Class A's (and primary).

51. NAB/MSTV plead at 16 for the Commission to strengthen the interference protections afforded full power digital stations vis-à-vis Class A, LPTV and translator stations. NAB/MSTV have a long, established track record of seeking to overprotect the signal quality and service area of full power broadcast licensees. Not only does this overprotection increase the view-ability of full power stations hundreds of miles from their community of license, but such overprotection dramatically reduces the number of authorizations that can be accommodated in the television broadcast bands. Fewer authorizations means less competition for audience; obviously a good thing for the few companies lucky enough to hold these licenses. NAB/MSTV was so successful with this spectrum hoarding strategy during the 60's and 70's that by the 1980's the top 50 television markets were "saturated" even though only one out of every six UHF television channels had a viewable signal on it in any particular location. NAB/MSTV

was so successful blocking outsiders from getting new television licenses that the Commission finally decided to let private land mobile radio and other users that had already resorted to adjacent channel operation, channel splitting, cellularization, and other spectrum efficiency enhancing techniques to accommodate their expediential growth, to use parts of the grossly underutilized UHF television band. Hopefully this proceeding will not fall victim to that same NAB/MSTV preclusive gambit.

52. NAB/MSTV posit that "interference in the digital environment is more objectionable than in the analog environment." Sadly, we understand NAB/MSTV to have it exactly backwards. What the Commission concluded, correctly, in its digital rulemaking was that interference is completely invisible to digital signal viewers until it is so great that the picture disappears completely - the so called "cliff effect." At the point there is no picture, so there is no interference either to the extent that the viewer will not sit and watch a plain blue screen. Furthermore, digital signal decoding technology is still young and will only get better as engineering progresses. Overprotecting based on today's infant technology will only waste more and more useable spectrum as the error correction capabilities of 8VSB technology improves.

53. NAB/MSTV would have the Commission, at page 17 in their comments, import wholesale into its digital interference protection rules the analog UHF taboos. The applicability of the analog UHF taboos was studied in detail in the Commission's Digital Television Proceeding. In the Commission's 6th Report and Order on digital television it resolved the questions there examined (and now being raised again by NAB/MSTV). On reconsideration the Commission reviewed criticism of that resolution by NAB and MSTV and reaffirmed its decision. Nothing has happened in the "real world" since the

6th Report and Order was implemented that should cause the Commission to now reconsider its earlier ruling. Nor does NAB/MSTV plead any examples or instances of unforeseen problems to justify reopening these tired questions. NAB/MSTV talk about (only) six years of knowledge and experience. That is six years during which hundreds of LPTV and Class A stations have sat waiting for their turn. From our perspective that is more than long enough a wait. It is time for the Commission to move forward and level the playing field for the rest of the television broadcast industry.

54. NAB/MSTV propose five new overprotection schemes to starve their Class A/LPTV competitors of spectrum. See NAB/MSTV comments at Page 19. First, they propose no adjacent channel co-location. It is well known and understood, largely because of highly successful experiments in the television translator industry, that adjacent channel operation is viable. Prohibiting adjacent channel operation by definition wastes a full 50% of the broadcast spectrum. It would be capricious and insane for the Commission to accept this proposal. Second, 31.4 km from the center of city is outside of all but the two or three largest cities in the country. NAB/MSTV's second proposal would eliminate another ten channels from use for every channel occupied by a full power broadcaster. That would take the efficiency use level of the broadcast spectrum back to the 1950's. Why go digital if it allows delivery of less television broadcast to the public than analog? The Commission examined these paranoiac fears and correcting concluded that, given the much lower power levels used in the LPTV/Class A services, the amount of interference caused by authorizations on these taboo channels will be de minimus. The Commission should not now reconsider those conclusions merely because NAB/MSTV wants to block future competition from digital

Class A's and LPTV's.

55. Third, NAB/MSTV seek to block the co-location of +14 and +15 digital LPTV/Class A authorizations. The interference potential of +14 authorizations at LPTV power levels is so low that the Commission considered abandoning this taboo completely in its Digital Television Rulemaking. After careful consideration, and in recognition of the need to make more efficient use of the UHF television band, the Commission decided to allow such applications on a co-location basis. OET Bulletin - 69 incorporates a check for the interference caused by +14 and +15 applications. Such applications are not granted unless no cognizable interference is caused. It would be horribly wasteful for the Commission to arbitrarily reverse this reasonable move toward greater spectrum efficiency when no documented harm has resulted from its implementation.

56. Fourth, the Commission must, in recognition of the fact that television receivers are as much a part of the television transmission system as are the transmitters, output filters, and antennas it regulates, resist pressure to reduce the efficiency of television spectrum utilization merely to minimize the cost of STV/HDTV tuners. NAB/MSTV suggest that the Commission increase the protection afforded DTV licensees to what ever level is necessary to achieve flawless performance of the current generation of ATSC receivers. Instead, the Commission should ensure that the UHF television spectrum is used efficiently and put the receiver manufacturers to the task of designing HDTV receivers that perform properly.

57. Lastly, NAB/MSTV bridle at the use of OET Bulletin - 69 to more accurately determine actual interference to full power stations, preferring instead the overprotection afforded them by the 1950's era contour overlap system in Part 74.625(b) of the

Commission's rules. NAB/MSTV are blunt in their comments that they do not want the level of overprotection given full power stations being granted to Class A and LPTV stations. We should be under protected, and they should be over protected. Spectrum efficiency be dammed. To the viewing public and off air LPTV or Class A signal is indistinguishable. What matters within each stations respective Grade A and Grade B signal contour is the nature and quality of the programming provided by the broadcaster, large or small. OET Bulletin- 69 wisely takes terrain shielding and masking into account because these two phenomena result in the victim stations signal not being viewable by the public. What NAB/MSTV are proposing is that the Commission continue to block Class A/LPTV use of this unused spectrum, wasting it. Since the Commission now has a tool for identifying this spectrum underutilization, so that this spectrum can be reused to provide service from an unblocked station, it would be arbitrarily capricious for the Commission to continue on relying on just inferior, contour overlap methodologies.

58. NAB/MSTV propose that the Commission require the "stringent" emission mask for digital Class A, LPTV and translator stations. Joint Commentors are pleased to say that we agree with NAB/MSTV on this subject in part. We believe that digital Class A authorizations should be primary, Part 73 licenses. We further believe LPTV licensees that apply for digital authorizations should be granted digital Class A authorizations that are primary, Part 73 licenses. Primary Part 73 licensees operating stations in spectrally crowded urban environments should be required to bear the higher costs of minimizing interferences. This would include having to purchase an output filter that achieves the stringent emission mask. Joint Commentors strongly disagree with the proposed economic waste and senseless hardship that would be caused if the Commission required

rural translators to meet the stringent mask. As secondary licensees they are not permitted to cause interference.

59. That requirement is complete and sufficient. This dichotomy begs the question of urban translators, rural LPTV's and urban LPTV's. Joint Commentors have already stated above their belief that urban LPTV's should be transitioned into urban digital Class A's. As such they too would be required to meet the stringent emission mask. Joint Commentors proposed in their comments that rural translators and rural LPTV's be merged into a new secondary service, perhaps referred to as Rural Television. That merged category would be a Part 74, secondary service. Being secondary they should be subject to minimal regulation, including at most having to meet the "simple" emission masks, but would be required to protect all primary spectrum users from interference by whatever means are necessary. Urban translators, urban LPTV's, and Class A's would be merged into a new primary, Part 73 service, perhaps called Class A Television or Urban Television. The stringent mask would be applicable to this merged licensee group.

60. NAB/MSTV "justify" their opposition to interference agreements between anyone with surmise and undocumented hypotheses. In actual practice the no objection letter and interference agreement process play an important and useful part in simplifying and expediting the Commission's application evaluation process. Interference agreements don't cause interference to any one, particularly not third parties, because what these agreements are actually used for is to disavowal a protection right afforded by the contour overlap method when the victim station agrees that in actuality there will be no interference. For example, a full power station has its analog station on channel 9 and

its DTV station on Channel 56. That station has built a 1.0 kW DTV station on channel 56, even though it is authorized 1.0 megawatts. The station built the "low power" DTV" channel 56 because when it comes time to give back one of its two channels it intends to give back channel 56 and digitize channel 9 at the highest authorized digital ERP.

61. A LPTV licensee in an adjacent market, perhaps 150 miles away needs to use channel 56 as a displacement channel. He can protect the 1 kW licensed DTV facility but he can not protect the 1.0 kW DTV allotment. He approaches the full power broadcaster for an interference agreement that states that the full power broadcaster accepts interference to its 1.0 megawatt channel 56 DTV construction permit. That full power broadcaster, being a good spectrum citizen, accepts this "interference" because he knows he will never build that 1.0 megawatt facility on an out of core channel. No interference is caused by the Commission's continued acceptance of "interference agreements" like this. While examples are as diverse as there are channel pairs, the result of interference agreements are all the same: applications preserving existing service or providing new service can be granted based on such agreements without the loss of significant amounts of service by anyone. Adoption of the NAB/MSTV prohibition on such agreements would nothing except waste otherwise usable spectrum.

62. When the Commission processes a Class A, LPTV or translator application it checks to ensure that no interference is caused to any previously applied for or authorized primary or secondary service application, construction permit, or license. This no interference check is done using the contour overlap algorithm as implemented by its LPONE, Version 2 program. That computer program studies all full power analog, full power digital, Class A, LPTV, and translator stations within 250 miles of the proposed

tower site. That computer program does not take terrain shielding, waiver requests, co-location, or interference agreements into account. If an application fails LPONE the applicant is sent a 30 day letter requiring it to submit a Longely Rice study proving that no cognizable interference will be caused by the proposed facility. If the application is not amended to pass either LPONE or Longely Rice it is dismissed. As a result of this thorough and cautious processing methodology Class A, LPTV, and translator authorizations protect both full power analog and digital stations completely.

63. NAB/MSTV want to load on top of this system a prior written notice requirement whereby all full power stations within 150 miles of a digital Class A or LPTV application receive written notice 60 days before the filing of such applications. Given the thoroughness of the Commissions processing system, the only purpose such notices could provide is to invite the applicants full power competitors to file strike applications or strike petitions to deny. Granting this anticompetitive request will do nothing more than mire the Commission's processing line with trumped up claims of either exaggerated interference concerns or hypothetical amendment plans. The transition to digital will be drastically slowed, rather than facilitated. The Commission should give no consideration to this merit less, disingenuous proposal.

64. NAB/MSTV, beginning at their Page 19, spell out their rational for why LPTV licensees should seek to convert to digital, thereby facilitating the overall broadcast transition to digital. Before this section NAB advocated that LPTV licensees at best be allowed only to convert on channel - the so called "flash cut" approach where these little broadcasters have to give up their analog viewers in order to get digital viewers, losing a significant part of their audience one way or the other. To this kindness NAB proposes

several additional sweet ideas. First, NAB/MSTV vigorously advocate that these small businesses go out and spend $100,000 to digitize their stations and get secondary, digital authorizations that can be displaced a week or month after they turn on without compensation. NAB has already opposed allowing these stations to be any bigger than the predecessor analog station, proposes that the application process be made more costly and time consuming by sending written invitations to every full power broadcast within 150 miles to file petitions against the application, and ask the Commission to require the applicant to overprotect all full power stations but receive reduced protection in return.

65. To tell an LPTV licensee that it can digitize, but that its digital authorization will be secondary, is a cruel hoax. Many LPTV stations have been providing local information and entertainment programming for going on 20 years. The industry has grown and demonstrated public acceptance notwithstanding the effectual denial of must carry, the constant threat of displacement, being left behind at the start of the DTV transition process, and the active, open and incessant hostility and opposition of the NAB, MSTV, and NCTA. Notwithstanding the NAB/MSTV's self-serving, anticompetitive, incantations to the contrary, this proceeding is the perfect opportunity for the Commission to recognize the growth of the LPTV industry, the twenty years of broadcast services it has delivered to the American public and the important part it can play in facilitating the transition to HDTV by not carrying over into the digital era the limitations of Part 74 status.

66. Congress has already instructed the Commission to regulate Class A stations as Part 73 licensees. Upon conversion of digital status Class A stations should be treated like every other Part 73 licensee in every respect. That leaves only the question of the

appropriate regulatory classification for digital translators. Joint Commentors are not opposed to NAB's suggestion that the Commission continue their secondary status. Consistent with this urban/primary - rural/secondary organization of the digital world, urban/Class A LPTV's would use BAS frequencies on a primary basis while rural/translators would use BAS frequencies on a secondary basis. Consistent with such secondary use, however, rural/translators should be allowed to use any available microwave frequencies to transport their signals from a urban full power station to the first rural link of a translator chain.

67: Joint Commentors read with some mirth NAB/MSTV's comments at their Page 21 that digital LPTV stations that transition on channel should be subject to the same minimum video programming service requirements as digital full power stations, should be required to use some of their capacity to provide free video programming, should be subject to the same public service interest obligations as analog LPTV's, and should have all PSIP generation capability, but should not get a digital simulcast channel, should not get primary status, and should not enjoy the same contour protection as full power stations. In short, digital LPTV stations should bear all the costs and much greater risks than full power stations, provide greater public service benefits to the public, not be must carried and remain subject to displacement. How NAB/MSTV could write this scenario with a straight face we fail to understand. We could not read it without laughing.

68. Joint Commentors in general agree with NAB/MSTV's comments that the rural translator service should not be fundamentally changed by its transition to digital. We disagree with NAB/MSTV in certain minor respects. Translators use of full powers broadcast signal is subject to retransmission consent. That contractual agreement is a

vehicle perfectly suited to tailor the translator systems proposed use of the full power digital signal to the realities, short comings, and needs of the particular translator system, while preserving the full power broadcast licensees leverage to insist on the proper handling of its data stream. For example, during the transition period a translator operator may need to convert a digital signal to analog or convert multiple analog signals to a single multicast digital signal in order to meet transitional limitations of its translator chain. A blanket rule prohibiting any modification of the digital data stream will frustrate such reasonable accommodations.

68: The fundamental nature of the translator industry is to pass through broadcast signals. Consistent with NAB/MSTV's comment that that fundamental nature not be changed, it is reasonable for translator operators to elect to strip from the data chain ancillary data that has not relationship to the broadcast programming transmitted. For example, if the originating full power broadcaster leases capacity to a home town car dealer for a private broadcast network dedicated to training its mechanics, it would be unfortunate to require that, a translator operator that merely wants to deliver that full power broadcasters network programming to its rural customers, must uselessly transmit the auto dealers private video downstream to its viewers. The full power broadcaster will probably be perfectly happy to allow the translator operator to strip out this useless data. For the Commission to adopt a wooden rule that can not accommodate this and other similar situations would be tragic.

69: The Commission concluded that, while in SDTV mode, Part 73 licensees need only transmit one SDTV free program feed, and were free to use the rest of their digital capacity for ancillary services that may or may not be broadcast related. Joint

Commentors respectfully suggest that, notwithstanding NAB/MSTV's more restrictive proposals, if a translator transmits at least one SDTV broadcast signal, it can use the balance of its digital capacity for anything, whether broadcast like or non broadcast, without altering the fundamental nature of its service. Given the secondary nature of the translator service, the uncertainties associated with the future of over the air broadcasting, and the broad flexibility given Part 73 licensees in their digital rulemaking, it is most reasonable for the Commission to extend the same flexibility to translators.

70. Lastly, Joint Commentors agree completely with NAB/MSTV that the Commission should not now (or ever) authorize a new digital booster service. All a booster really is an on channel translator. Given the extreme crowding of the television spectrum caused by the reduction in the number of television channels and the authorization of digital simulcast channels, the Commission can no longer afford to recognize predicted Grade B service areas that do not receive a usable signal from a licensed facility. Once a TV facility is licensed, its protected contour should be defined as only those areas receiving a usable signal. That licensee should receive no special filing rights for areas it can not serve with its licensed authorization. Terrain blocked or over the horizon hypothetical Grade B service areas should not be protected from use by others in need of spectrum capacity. Consistent with this reality check, a booster application is just a translator application filed by the parent station. There is no need for a separate class of translators called boosters just because they happen to be on the same channel. Therefore, in this respect (only) NAB/MSTV got it right.

Respectfully submitted,

Joint Commentors

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